

In the Matter of )  
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Revision of the Commission's ) CC Docket No. 94-102  
Rules to Ensure Compatibility )  
with Enhanced 911 Emergency )  
Calling Systems )  
 )  
Petition for Limited Waiver )

PETITION FOR LIMITED WAIVER OF  
SECTION 20.18(C) OF THE COMMISSION'S RULES

**I) Relief Requested**

<sup>1</sup> Section 20.18(c) of the Rules states that "[l]icensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, e.g., through the use of Text Telephone Devices (TTY)." The accompanying note to this Rule section specifies that "[o]perators of digital wireless systems must begin complying with the provisions of this paragraph on or

to comply with the requirements of Section 20.18(c) of the Rules.

## II) Background

2. The Petitioner is the licensee of Cellular Radiotelephone Service Station KNKN236, the Frequency Block B cellular system serving the B2 Segment of the Utah 5 - Carbon RSA. The Petitioner is also the licensee of Broadband Personal Communications Service Stations KNLG530 (Frequency Block E, BTA No. 381, Rock Springs, Wyoming BTA), WPQZ730 (Frequency Block E, BTA No. 168, Grand Junction, Colorado BTA), WPQZ731 (Frequency Block E, BTA No. 110, Denver, Colorado BTA) and WPSZ758 (Frequency Block E, BTA No. 399, Salt Lake City - Ogden, Utah BTA). The digital wireless portion of the Petitioner's network employs Code Division Multiple Access ("CDMA") technology.

3. The Petitioner's wireless systems currently employ a Nortel DMS100W dual-load switch. The switch is termed "dual-load" because it performs switching functions for both the Petitioner's wireless systems and for the landline telephone operations of the Petitioner's parent corporation, Uintah Basin Telecommunications, Inc. d/b/a UBTA Communications ("UBTA Communications"). UBTA Communications is a rural telephone cooperative which is wholly-owned by its subscribers.

4. Nortel has essentially classified the DMS100W dual-load switch as an obsolete technology and, therefore, no longer provides support services or software upgrades for this product. As a

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before June 30, 2002."

result, the DMS100W dual-load wireless/wireline traffic switch cannot be upgraded to process 911 calls from digital wireless TTY devices, or for any other purpose.

5. In view of the foregoing, the Petitioner and UBTA Communications will be required to replace their current DMS100W dual-load switching equipment with newly developed Nortel products; and, through a process described as "splitting the switch," migrate their wireless and landline traffic to separate switches. As we understand it based upon Nortel's representations to us, and insofar as relevant here, the existing DMS100W dual-load switch will retain its current hardware but will be "stripped" of its existing software. The switch will receive a completely new software upload (i.e., a MTX10 software upload) and be "transformed" into a new switch, to be designated a Nortel DMS100MTX Wireless switch. As we further understand it, the DMS100MTX Wireless switch will have digital wireless TTY and other capabilities. However, to date, and despite repeated inquiries, Nortel has not provided either a price quote or a delivery date.

6. As noted in its previous quarterly report filings in this docket, the Petitioner is a small carrier licensed to serve comparatively small markets. As a small carrier, the Petitioner lacks any influence over the research and development activities of equipment manufacturers, and will rely upon its equipment manufacturer (in this case Nortel) to install (on a turnkey basis) the equipment necessary to allow the systems to process 911 calls

originating from digital TTY devices. The Petitioner's previous quarterly report filings stated that the necessary equipment would be obtained and installed once it becomes available from the equipment vendor, in this case Nortel.

7. It should also be emphasized that historical experience generally indicates that small carriers (such as the Petitioner) are not a first priority for equipment vendors when it comes to installing a new product. Hopefully, the waiver and extension of time requested herein will afford the Petitioner the time necessary for Nortel to install and the new switching equipment.

### **III) Necessity for Waiver**

8. In its Fourth Report and Order (CC Docket No. 94-102), FCC 00-436, 15 FCC Rcd. 25216 (2000) ("Fourth R&O"), the Commission established June 30, 2002 as the date by which wireless carriers operating digital systems must be capable of transmitting 911 calls from individuals using TTY devices. Fourth R&O, Para. No. 8. Because circumstances dictate that the Petitioner will be unable to meet the June 30, 2002 deadline because of the unavailability of equipment, it is obligated to request a waiver of the requirements of Section 20.18(c) of the Rules. Under Section 1.3 of the Rules, the Commission may waive the requirement for good cause shown.

9. Section 1.925(b)(3) of the Rules provides that the Commission may grant a waiver request if the applicant can show that "the underlying purpose of the rule(s) would not be served or would be frustrated by [its] application to the instant case, and

that grant of the requested waiver would be in the public interest;" or that "in view of unique or unusual factual circumstances of the case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."

10. In this case, the underlying purpose of Section 20.18(c) of the Rules is to ensure that persons with hearing or speech disabilities using digital wireless systems can place 911 calls using TTY devices as rapidly as possible once the necessary technology becomes commercially available to the wireless carriers.

The Petitioner shares the Commission's goal, but has no reasonable alternative to requesting a waiver. In establishing the June 30, 2002 deadline, the Commission predicated its decision on representations from the equipment vendors "that network infrastructure manufacturers should have software generally available to all carriers by December 31, 2001." Fourth R&O, Para. No. 8. The Commission interpreted "the term 'generally available' as the date that the manufacturer announces as the release date for the upgraded software to all carriers for deployment." Fourth R&O, n. 15. However, subsequent events did not bear out the Commission's optimistic projections as to when the necessary software would be generally available. Perhaps this is not surprising, since the projection was made in a document released in December of 2000, i.e., a full year prior to December 31, 2001. As noted above, Nortel has discontinued support services and all

software upgrades for the DMS100W dual-load switch, thus requiring the Petitioner to obtain a replacement Nortel product which is not presently commercially available. Thus, the necessary Nortel software is not generally available at this time for two independent reasons: a) first, because the existing switch cannot be upgraded; and b) second, because the replacement switch is not available. Thus, the factual predicate upon which the Commission based the June 30, 2002 deadline stands rebutted by the facts of this case.

11. Grant of the requested waiver is also consistent with the public interest since no individual will be harmed if the limited waiver requested herein is granted. At present, digital TTY handsets are a new product and relatively scarce, virtually eliminating the possibility that a significant portion of the public will be harmed in the short period of time the Petitioner needs to make its systems digital wireless TTY compliant. While the Petitioner installs and tests its digital TTY solution, analog TTY devices will still work over the facilities of Cellular Radiotelephone Service Station KNKN236. Recognizing the benefit to the public, the Commission encouraged wireless carriers to continue making analog TTY service available. Fourth R&O, Para. No. 28. Grant of the requested waiver will allow the Petitioner to concentrate its limited resources on implementing a digital TTY solution at the earliest feasible date while continuing to offer the benefits of analog-based TTY service.

12. The underlying purpose of Section 20.18(c) of the Rules is to require "carriers to achieve TTY/digital compatibility at the earliest possible date;"<sup>2</sup> and this purpose would be frustrated by application of the regulation's June 30, 2002 deadline in this case. As noted above, the Commission was presumably aware of the tenuous nature of establishing a date certain for digital TTY compliance when it originally promulgated Section 20.18(c) of the Rules, knowing full well that digital TTY technology did not exist at that time. Fourth R&O, Paras. 7 and 8. The Commission chose to establish a "date certain" for compliance to provide an incentive "for the industry to maintain TTY access as a priority." Fourth R&O, Para. 7. The Commission has long recognized that compliance deadlines should be linked to the availability of manufacturer equipment. See, e.g., Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992 -- Compatibility Between Cable Systems and Consumer Electronics Equipment, 9 FCC Rcd. 1981, Paras. 76-77 (!994) (modifying a proposed compliance deadline to account for unavailability of necessary equipment). In establishing the June 30, 2002 deadline, the Commission relied on manufacturers representations as to the anticipated availability of equipment by December 31, 2001. Fourth R&O, Para. 8. As demonstrated above, the necessary Nortel digital TTY software is not generally available at this time; and will not become available until some indeterminate future date.

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<sup>2</sup> Fourth R&O, Para. 29.

Accordingly, the June 30, 2002 deadline was developed under assumptions that proved to be incorrect with respect to timing. The Petitioner has been working diligently to upgrade the network to achieve digital TTY compatibility and, therefore, the underlying purpose of Section 20.18(c) of the Rules -- to ensure public safety for the hearing and speech impaired at the earliest possible date - - is being served.

13. Application of the June 30, 2002 deadline to the Petitioner would be highly inequitable because of the lack of availability of the necessary TTY software upgrade, a factor outside the Petitioner's control. Availability is completely within the control of the manufacturer, Nortel -- not the Petitioner. As a small customer of Nortel, the Petitioner cannot reasonably command the attention of Nortel. The Commission has long held that the unavailability of equipment necessary to meet a Commission compliance deadline warrants a waiver of such deadline. See, e.g., Roosevelt County Rural Telephone Cooperative, Inc., 13 FCC Rcd. 22, Paras. 29-36 (1997) (granting waivers of CIC conversion deadline where product needed to accomplish upgrade was "not readily available" from manufacturers); Telephone Number Portability, 13 FCC Rcd. 9564, 9568 (1998); Cuba City Telephone Exchange Company, 12 FCC Rcd. 21794, Paras. 16-25 (1997); CC&S Telco, Inc., 6 FCC Rcd. 349, Paras. 6 and 12 (1991).

14. Equally as significant, it would be unduly burdensome for the Petitioner to pursue any alternative digital TTY solution at



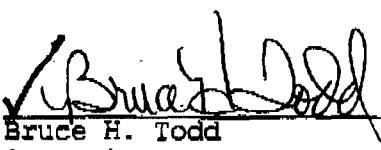
this time. The Petitioner is essentially wedded to the Nortel digital TTY software since the Petitioner relies upon Nortel's proprietary switching and infrastructure products to run the systems and will continue to do so in the future. In addition, employing the products of another vendor would not enable the Petitioner to meet the June 30, 2002 deadline. This is so because the other major equipment vendors (e.g., Lucent, etc.) have experienced delays in the development of their TTY solutions; and there is no guarantee that any other equipment vendor could provide the Petitioner with the necessary equipment any sooner than Nortel.


Reliance upon Nortel is the Petitioner's only feasible TTY option. As soon as Nortel delivers, installs and tests the MTX10 software, TTY compliance will have been achieved. Until such time, the Petitioner has no reasonable alternative to requesting the waiver.

WHEREFORE, good cause shown, the Petitioner requests that the instant petition be granted.

Respectfully submitted,  
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By:   
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